



**Legislative  
Council Staff**

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**FISCAL NOTE**

<b>Drafting Number:</b>	LLS 19-1046	<b>Date:</b>	March 28, 2019
<b>Prime Sponsors:</b>	Rep. Roberts; Wilson Sen. Winter; Donovan	<b>Bill Status:</b>	House Rural Affairs
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**Bill Topic:** CONSERVATION EASEMENT TAX CREDIT MODIFICATIONS

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill modifies and extends the Conservation Easement Oversight Commission and the conservation easement certification program in the Department of Regulatory Agencies until 2026, which increases state expenditures annually beginning in FY 2019-20. The bill also modifies the conservation easement income tax credit, reducing state revenue annually beginning in the current FY 2018-19.

**Appropriation Summary:** For FY 2019-20, the bill includes a General Fund appropriation of \$250,000 to the Department of Higher Education and requires a cash fund appropriation of \$500,000 to the Department of Regulatory Agencies and 3.75 FTE.

**Fiscal Note Status:** This fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under HB 19-1264**

		<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
<b>New Impacts</b>		<i>(current year)</i>		
Revenue	General Fund	(\$6.8 million)	(\$13.6 million)	(\$13.6 million)
Expenditures	General Fund	-	\$250,000	-
<b>Continuing Program Impacts</b>		<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>
Revenue	Cash Funds	-	\$500,000	\$500,000
Expenditures	Cash Funds	-	\$500,000	\$500,000
	FTE	-	3.75 FTE	3.75 FTE
<b>TABOR Refund</b>	General Fund	-	-	-

\* Table 1 shows the new impacts resulting from changes to the program under the bill, and the continuing impacts from extending the program beyond its current repeal date.

## Summary of Legislation

**Sunset.** Under current law, the Conservation Easement Oversight Commission in the Division of Conservation in the Department of Regulatory Agencies (DORA), and the program to certify conservation easement holders, repeal on July 1, 2019. This bill extends the commission and program until July 1, 2026.

**Conservation easement tax credit certification.** Under current law, the Board of Real Estate Appraisers in the Division of Real Estate in the DORA must establish classroom education and experience requirements for appraisers who prepare a real estate valuation for a conservation easement for which a tax credit is claimed. The board may not issue a tax credit certificate for a conservation easement unless the appraiser who prepared the valuation is in compliance with these education requirements. This bill removes this power and duty from the board.

**Conservation easement income tax credit.** Under current law, a tax credit for a conservation easement donated on or after January 1, 2015, is equal to 75 percent of the first \$100,000 of the property value, and 50 percent for any amount in excess of \$100,000. The credit is capped at \$1.5 million per donation. Beginning with conservation easements donated on or after January 1, 2019, the bill sets the value of the tax credit at 90 percent of the fair market value of the donated portion of the easement, increases the cap to \$5.0 million per donation, and limits the amount of the credit issued per year to \$1.5 million.

**Workgroup.** The bill requires the Division of Conservation in DORA to convene a working group of stakeholders and, in conjunction with the Department of Law (DOL) and the Department of Revenue (DOR):

- propose statutes and regulations for an alternative method to the existing appraisal process for certifying the value of a conservation easement tax credit;
- develop eligibility criteria and a process to provide retroactive tax credits to taxpayers who's conservation easement tax credit claim was denied in whole or in part from 2000 to 2013; and
- report recommendations to the General Assembly no later than December 1, 2019.

The bill repeals existing language requiring a similar work group and report by December 1, 2018.

**Disclosures.** Beginning January 1, 2020, the owner of a property who is granting a conservation easement must execute a disclosure, developed by the Division of Conservation and available online that includes, but need not be limited to, an acknowledgment that the easement is being granted in perpetuity. A signed disclosure must be submitted to the division as part of the tax credit application.

**Conservation easement termination.** Under current law, a conservation easement may be released or terminated if the holder of the easement purchases the property outright from the property owner. This bill prohibits termination of a conservation easement under these circumstances if a state income tax credit has been allowed for the easement. If it is determined that conditions on or surrounding a conservation easement have changed to prevent the easement's conservation purposes, a court may terminate the easement at the joint request of both the easement holder and the property owner. Similarly, if the public condemnation of property under a conservation easement renders the easement impossible to fulfill its conservation purposes, the easement may be terminated by the condemnation process.

**COMaP.** The bill allows the Department of Higher Education (DHE) to enter a limited purpose fee-for-service contract with Colorado State University to provide public access to the Colorado Ownership, Management, and Protection (COMaP) service, and appropriates \$250,000 General Fund to the DHE for the cost of that contract.

The bill includes conforming amendments, including changes to the current session House Bill 19-1172, which is a recodification of Title 12 without substantive changes.

## State Revenue

The bill is expected to decrease state revenue by \$6.8 million in the current FY 2018-19, and by \$13.6 million in FY 2019-20 and subsequent years. The estimate for FY 2018-19 represents a half-year impact for tax year 2019 on an accrual accounting basis. The bill reduces income tax revenue, which is subject to TABOR.

**Credit certifications.** Under current law, the Division of Conservation is expected to certify tax credits for an average of 30 conservation easements per year, and each easement is expected to be valued at approximately \$1.0 million. Current law allows a tax credit of \$525,000 for each \$1.0 million easement. The bill increases the value of the credit to \$900,000 per \$1.0 million easement, allowing an additional \$375,000 in credit per easement, or an estimated \$11.25 million annually beginning in tax year 2019.

Based on the observed increase in conservation easement credit certifications following the tax credit increase under Senate Bill 15-206, the amount of land conserved in an easement is assumed to increase when the value of the credit increases. Because the bill increases the value of the credit by 71 percent, from \$525,000 to \$900,000, for an average donor, the bill is expected to increase the amount of land conserved in easements by 26 percent, based on an observed change in behavior following adoption of SB 15-206. Based on these assumptions, the bill is expected to increase the amount of land added to conservation easements, and the total value of tax credits by an estimated \$7.7 million annually, beginning in tax year 2019. The bill allows credits to be certified for 90 percent of this amount, or an estimated \$6.9 million per year.

**Credit claims.** Because the conservation easement credit is either nonrefundable or partially refundable in all years, the amount of credits claimed against income tax liabilities each year is less than the value of credits certified by the Division of Conservation. Historical data from the DOR indicate that, on average, the amount of credits applied to taxes each year is approximately 75 percent of the total amount of credits certified for the year. Assuming that this share does not change, the bill is expected to decrease state revenue by about \$13.6 million annually, or 75 percent of the anticipated \$18.2 million annual increase in credit certifications.

To the extent that certified credits are claimed by taxpayers more quickly than in the past, the revenue decrease attributable to the bill will be greater than estimated.

## State Expenditures

**New program impacts.** The bill allows the Department of Higher Education to enter into a limited purpose fee-for-service contract with Colorado State University to provide public access to the Colorado Ownership, Management, and Protection (COMaP) service, and appropriates \$250,000 General Fund to the DHE for the cost of that contract.

The bill also requires that the Division of Conservation in the DORA develops a standard disclosure statement for use by individuals donating a conservation easement, and also requires that the division convene a work group of stakeholders and representatives of state agencies to provide input to the oversight commission on various issues. These efforts do not require new appropriations.

**Continuing program impacts.** The DORA has no direct revenue or expenditures to administer the Conservation Easement Oversight Commission but does receive and spend approximately \$500,000 in fee revenue and employs 3.75 FTE annually to support the program to certify conservation easement holders. The bill extends the oversight commission and the certification program until 2026. This fiscal note assumes that the division will continue to have revenue and expenditures roughly equivalent to the existing program. These resources also support the work of the oversight commission.

*TABOR refunds.* The bill is expected to decrease state General Fund obligations for TABOR refunds by \$6.8 million in the current FY 2018-19. Under current law and the March 2019 Legislative Council Staff forecast, the bill will correspondingly reduce the amount refunded to taxpayers via reimbursements to local governments for property tax exemptions in FY 2019-20. The state is not expected to collect a TABOR surplus in FY 2019-20 or FY 2020-21.

## Effective Date

The bill takes effect June 20, 2019; except that sections 10-14 take effect only if HB 19-1172 becomes law, in which case those sections take effect on October 1, 2019.

## State Appropriations

For FY 2019-20, the bill includes a General Fund appropriation of \$250,000 to the Department of Higher Education and reappropriates this amount for a fee-for-service contract at Colorado State University.

For FY 2019-20, the bill requires a cash fund appropriation of \$500,000 from the Conservation Cash Fund to the Department of Regulatory Agencies and 3.75 FTE.

## State and Local Government Contacts

Higher Education  
Law  
Revenue

Information Technology  
Natural Resources

Judicial  
Regulatory Agencies